

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Edward Johnson, :
Plaintiff, :
: :
v. : File No. 2:12 CV 138
: :
Andrew Pallito, Commissioner, :
Vermont Department of :
Corrections, :
Defendant. : :
:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed November 26, 2012. Plaintiff's objections were filed December 6, 2012.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss (Doc. 9) is GRANTED. Plaintiff's Motion to Amend his

Complaint (Doc. 13) is DENIED and the case is DISMISSED without prejudice. It is also ordered that Plaintiff be allowed thirty (30) days to file an amended complaint. Failure to file an amended complaint will result in the dismissal of the case with prejudice.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

Dated at Burlington, in the District of Vermont, this 7th day of December, 2012.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge